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*Attorneys for Plaintiffs, the People of the  
State of California ex rel. the California Air  
Resources Board*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA  
*ex rel.* THE CALIFORNIA AIR RESOURCES  
BOARD,

Plaintiffs,

v.

H&S PERFORMANCE, LLC, a Utah limited  
liability company; CASEY W. SHIRTS, an  
individual, BENTLEY C. HUGIE, an  
individual, and DOES 1-100, inclusive,

Defendants.

**EXEMPT FROM FILING FEES  
(GOV. CODE § 6103)**

**CONFORMED COPY  
ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

MAY 08 2014

Sherri R. Carter, Executive Officer/Clerk  
By Cristina Grijalva, Deputy

CASE NO.:

**BC 545099**

Assigned:  
Dept.:  
Action Filed:

**COMPLAINT FOR:**

- 1. CIVIL PENALTIES FOR  
VIOLATIONS OF VEHICLE CODE  
SECTION 27156;**
- 2. CIVIL PENALTIES FOR  
VIOLATIONS OF TITLE 13 OF THE  
CALIFORNIA CODE OF  
REGULATIONS, SECTION 2220, ET  
SEQ.;**
- 3. INJUNCTION PURSUANT TO  
HEALTH & SAFETY CODE § 43017.**

1 Plaintiffs; the People of the State of California *ex rel.* the California Air Resources Board  
2 are informed and believe and on such information and belief allege the following:

3 **INTRODUCTION**

4 1. California Air Resources Board ("ARB," or "state board"), the "clean air agency"  
5 for the state of California with responsibility for control of air emissions from motor vehicles,  
6 brings this action on behalf of the People of the State of California ("People" or "Plaintiffs")  
7 pursuant to its authority under Health and Safety Code sections 39000, et seq., and Vehicle Code  
8 section 27156. Plaintiffs seek redress under Health and Safety Code section 43017, which  
9 authorizes ARB to enjoin any violation of any provision of Part 5 "Vehicular Air Pollution  
10 Control" of Division 26 "Air Resources" of the Health and Safety Code. In addition, Plaintiffs  
11 seek civil penalties as permitted under Division 26 of the Health and Safety Code and the Vehicle  
12 Code.

13 2. For decades, California has regulated emissions from engines contained in motor  
14 vehicles by adopting and implementing emission standards for motor vehicles and requiring that  
15 the exhaust systems conform to standards established by ARB for both new and used motor  
16 vehicles. (Health & Saf. Code, § 43600.)

17 3. To improve and maintain air quality, the ARB requires vehicle manufacturers to  
18 develop and incorporate engine and emission equipment systems (e.g., catalytic converters, air  
19 injection systems, diesel particulate filters, exhaust gas recirculation, etc.) that reduce emissions  
20 from vehicles that cause California's severe air quality problems. The proper operation of these  
21 emission control systems and components is essential in reducing motor vehicle emissions.

22 4. To ensure that these systems operate as designed, and because such modifications  
23 may compromise the effectiveness of vehicles' emission control systems, California has  
24 developed laws that, for example, prohibit the sale, offer for sale, advertisement, or installation of  
25 motor vehicle pollution control devices, exhaust systems, or aftermarket parts unless such  
26 equipment has been certified or exempted by the ARB, as well as laws that prohibit modifications  
27 to any required motor vehicle pollution control device or use of aftermarket parts that may affect  
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1 motor vehicle emissions. An aftermarket part is generally any device used on a vehicle that was  
2 not part of the vehicle when it was originally sold.

3 5. Vehicle Code section 27156 provides that unless an exemption is obtained from  
4 ARB "[n]o person shall install, sell, offer for sale, or advertise any device, apparatus, or  
5 mechanism intended for use with, or as a part of, a required motor vehicle pollution control  
6 device or system that alters or modifies the original design or performance of the motor vehicle  
7 pollution control device or system."

8 6. To obtain an exemption from Vehicle Code section 27156 for an aftermarket part,  
9 a manufacturer must submit an application to the ARB for evaluation and approval according to  
10 test procedures adopted by the ARB. (See Cal. Code Regs., tit. 13, § 2222, subds. (e), (h).) ARB  
11 may exempt parts from the prohibitions of Vehicle Code section 27156 only if it finds the part  
12 will "not reduce the effectiveness of a required motor vehicle pollution control device" or use of  
13 the part "will result in emissions from the modified or altered vehicle that comply with"  
14 applicable emission standards. (Vehicle Code, § 27156, subd. (h).) This exemption is granted in  
15 an ARB Executive Order and allows the part to be installed on specific emission controlled  
16 vehicles. Every part ARB grants an Executive Order to is assigned a number that can be verified  
17 by Smog Check stations, Bureau of Automotive Repair Referee stations, or by the ARB.

18 7. Advertisement in California of any an aftermarket part that is not exempted from  
19 Vehicle Code section 27156 by ARB and alters or modifies the original design or performance of  
20 any required motor vehicle pollution control device or system is prohibited unless each  
21 advertisement contains a required legally adequate disclaimer. (Cal. Code Regs., tit. 13, § 2222,  
22 subd. (b).)

23 8. Each person who is engaged in the business of selling aftermarket parts that alter  
24 or modify the original design or performance of any required motor vehicle pollution control  
25 device or system and have not been exempted from Vehicle Code section 27156 must maintain  
26 records of these sales, make them available to the ARB and maintain them for four years. (Cal.  
27 Code Regs., tit. 13, § 2222, subd. (f).)

9. Defendants H&S Performance, LLC ("H&S Performance"), Casey W. Shirts, Bentley C. Hugie, and all other defendants (collectively "defendants"), violated Vehicle Code section 27156 and Title 13 of the California Code of Regulations, section 2220, et seq. by advertising, selling, offering to sell, and/or advertising parts or devices that alter or modify the original design or performance of required motor vehicle pollution control devices or systems on California vehicles which and have not been exempted by ARB from Vehicle Code section 27156 and by failing to maintain records thereof. Defendants' acts are particularly egregious because their violations involve parts or devices that are used on diesel vehicles, the emissions from which are designated as toxic air contaminants by California law. (See Cal. Code Regs., tit. 17, section 93000.) Plaintiffs became aware of the acts/omissions referenced herein that gave rise to the defendants' violations within the three years preceeding the filing of this complaint.

**PARTIES**

10. The California Air Resources Board is a public agency of the State of California. ARB, among other duties, is responsible for the control of emissions from motor vehicles and coordinates the efforts of all levels of government as they affect air quality. (Health & Saf. Code, § 39500.)

11. Defendant H&S Performance is a limited liability company with offices in St. George, Utah. H&S Performance conducts business within the State of California through advertisements, sales through dealers/distributors, internet sales, and direct sales to consumers and to vehicle repair/customization facilities in the throughout California, with a significant portion of sales in Southern California.

12. Defendant Casey W. Shirts is an individual residing in the state of Utah and is or was at all times relevant to this complaint an officer, director, manager, principal, and/or employee of Defendant H&S Performance and personally participated in the violations alleged herein.

13. Defendant Bentley C. Hugie is an individual residing in the state of Utah and is or was at all times relevant to this complaint an officer, director, manager, principal, and/or

1 employee of Defendant H&S Performance and personally participated in the violations alleged  
2 herein.

3 14. The true names and capacities, whether individual, corporate, associate or  
4 otherwise, of the defendants sued in this Complaint under the fictitious names of Does 1 through  
5 100, inclusive, are unknown to the People who therefore sue each such defendant by such  
6 fictitious name. The People will ask leave of court to amend this complaint to show the true  
7 name and capacity of each defendant when these facts are discovered.

8 15. The People are informed and believe, and based on that information and belief  
9 allege, that at all times relevant hereto, all defendants either committed the violations alleged  
10 herein, assisted in the violations, or conspired with each other to commit the violations and are in  
11 some manner responsible for the events, occurrences, and circumstances which form the basis of  
12 this lawsuit and are therefore liable for the damages, costs, and other relief sought herein.

13 16. The People are informed and believe, and based on that information and belief  
14 allege, that at all times relevant hereto, all private person defendants personally participated in the  
15 violations alleged herein.

16 17. The People are informed and believe, and based on that information and belief  
17 allege, that at all times relevant hereto, each defendant was the principal, member, director,  
18 officer, agent, supervisor, contractor, employer, employee, and/or representative of the other in  
19 doing the things alleged in this Complaint and that each of them was acting within the course and  
20 scope of such agency, contract, and/or employment. Whenever in this complaint reference is  
21 made to any act of defendants, such allegations shall be deemed to mean that the principal,  
22 member, director, officer, agent, supervisor, contractor, employer, employee, and/or  
23 representative of said defendants did or authorized such acts while actively engaged in the  
24 management, operation or conduct of the affairs of said defendants, and while acting within the  
25 course and scope of their employment.  
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1 maximum fine that may be imposed and no part of which may be suspended. The total number of  
2 the uncertified/non-exempted devices is not yet known, but upon information and belief, and  
3 based on the investigation to date, including defendants' verified responses to subpoena, the  
4 People allege that defendants, and each of them, sold, offered for sale, or advertised at least 1,000  
5 uncertified/non-exempted pollution control devices and committed numerous additional  
6 violations of offering for sale and/or advertising uncertified/non-exempted equipment in  
7 California.

8 24. Defendants, and each of them, have committed separate violations of Vehicle  
9 Code section 27156 for each part they sold, offered for sale, and/or advertised that was not  
10 exempted by ARB. Defendants are liable for a civil penalty of up to \$1,500 per violation of  
11 Vehicle Code section 27156. (Health & Saf. Code, § 43008.6.) Title 13 of the California Code of  
12 Regulations, section 2225(a) provides that "[t]he executive officer may also seek fines for  
13 violations of Vehicle Code section 27156, or other laws or regulations, as applicable."

14 25. Defendants are required to produce proof of correction pursuant to Vehicle Code  
15 section 40150 or proof of exemption pursuant to Vehicle Code sections 4000.1 or 4000.2.

16  
17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS,**  
19 **SECTION 2220, ET SEQ.**

20 **[Against All Defendants]**

21 26. Plaintiffs re-allege and incorporate herein the foregoing paragraphs 1 through 25  
22 of this Complaint.

23 27. Title 13 of the California Code of Regulations, section 2222(b) prohibits  
24 advertisement in California of any aftermarket part that alters or modifies the original design or  
25 performance of any required motor vehicle pollution control device or system and is not certified  
26 or exempted by from Vehicle Code section 27156 by ARB unless each advertisement contains a  
27 required legally adequate disclaimer.

1           28.     Title 13 of the California Code of Regulations, section 2222(f) provides that each  
2 person who is engaged in the business of selling aftermarket parts that alter or modify the original  
3 design or performance of any required motor vehicle pollution control device or system and have  
4 not been exempted from Vehicle Code section 27156 by ARB must maintain records of these  
5 sales and specified information, make them available to the ARB, and maintain them for four  
6 years.

7           29.     Defendants, and each of them, have violated Title 13 of the California Code of  
8 Regulations, section 2222(b) by advertising in California of aftermarket parts that alter or modify  
9 the original design or performance of any required motor vehicle pollution control devices or  
10 systems and that are not certified or exempted by from Vehicle Code section 27156 by ARB  
11 without legally adequate disclaimers.

12           30.     Defendants, and each of them, have violated Title 13 of the California Code of  
13 Regulations, section 2222(f) by failing to maintain the specified records for the specified amount  
14 of time or make them available to ARB.

15           31.     Title 13 of the California Code of Regulations, section 2225(a) provides that "[t]he  
16 executive officer may also seek fines for violations of Vehicle Code section 27156, or other laws  
17 or regulations, as applicable."

18           32.     Title 13 of the California Code of Regulations, section 2220, et seq. was adopted  
19 pursuant to authority of Part 5 of Division 26 of the Health and Safety Code. Health and Safety  
20 Code section 43016 provides a \$500 per unit penalty for violations of regulations adopted  
21 pursuant to Part 5. Defendants, and each of them, violated provisions of Title 13 of the California  
22 Code of Regulations, section 2220, et seq. by committing the acts described above and ARB  
23 seeks a civil penalty of \$500 per violation from each defendant.

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**THIRD CAUSE OF ACTION**  
**INJUNCTION PURSUANT TO HEALTH AND SAFETY CODE 43017**  
**[Against All Defendants]**

33. Plaintiffs re-allege and incorporate herein the foregoing paragraphs 1 through 32 of this Complaint.

34. Health and Safety Code section 43017 provides: "[t]he [ARB] may enjoin any violation of any provision of this part [Part 5 of Division 26 of the Health and Safety Code], or of any order, rule, or regulation of the state board, in a civil action brought in the name of the people of the State of California, except that the state board shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or tending to show, irreparable damage or loss."

35. Defendants, and each of them, violated provisions of Title 13 of the California Code of Regulations, section 2220, et seq., which are regulations of the ARB adopted pursuant to authority of Part 5 of Division 26 of the Health and Safety Code by committing the acts described above, and ARB seeks an injunction described below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against defendants and each of them as follows:

1. For civil penalties in an amount according to proof to be determined at the time of trial, but not less than \$2,000,000, pursuant to the following:

- a. Health and Safety Code section 43008.6(b): \$1,500 per violation;
- b. Health and Safety Code section 43016: \$500 per violation.

2. For the issuance of preliminary and permanent injunctive relief against the defendants, and each of them, enjoining them from violating Vehicle Code sections 27156, and Title 13 of the California Code of Regulations, section 2220, et seq., and from engaging in or performing, directly or indirectly, any and all of the following acts:

- a. Offering for sale, advertising, or representing in California any motor vehicle pollution control device that has not been certified or exempted by ARB.

- 1                   b. Offering for sale, advertising, or representing in California any motor vehicle  
2                   pollution control device as a certified or exempted device which, in fact, is not  
3                   a certified or exempted device.
- 4                   c. Offering for sale, advertising, or representing in California any motor vehicle  
5                   pollution control device that alters or modifies the original design or  
6                   performance of the motor vehicle pollution control system unless that device  
7                   has been certified or exempted by ARB.
- 8                   d. Offering for sale, advertising, or representing in California any motor vehicle  
9                   exhaust system, or part thereof, in California unless that system or part has  
10                  been certified or exempted by ARB.
- 11                  e. Offering for sale, advertising, or representing in California through any agent  
12                  any aftermarket part for use on a motor vehicle unless that part has been  
13                  certified or exempted by ARB.
- 14                  f. Selling any motor vehicle pollution control device that has not been certified or  
15                  exempted by ARB, directly or indirectly through any person, whether such  
16                  person is a dealer, distributor, reseller, affiliate, contractor, or otherwise, to any  
17                  other person that reasonably may install such pollution control device on a  
18                  vehicle registered in California.
- 19                  g. Selling any motor vehicle pollution control device as a certified or exempted  
20                  device which, in fact, is not a certified or exempted device, directly or  
21                  indirectly through any person, whether such person is a dealer, distributor,  
22                  reseller, affiliate, contractor or otherwise, to any other person that reasonably  
23                  may install such pollution control device on a vehicle registered in California.
- 24                  h. Selling any device that alters or modifies the original design or performance of  
25                  a motor vehicle pollution control system unless that device has been certified  
26                  or exempted by ARB, directly or indirectly through any person, whether such  
27                  person is a dealer, distributor, reseller, affiliate, contractor or otherwise, to any  
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1 other person that reasonably may install such device on a vehicle registered in  
2 California.

3 i. Selling any motor vehicle exhaust system, or part thereof, in California unless  
4 that system or part has been certified or exempted by ARB, directly or  
5 indirectly through any person, whether such person is a dealer, distributor,  
6 reseller, affiliate, contractor or otherwise, to any other person that reasonably  
7 may install such device on a vehicle registered in California.

8 j. Selling any aftermarket part for use on a motor vehicle unless that part has  
9 been certified or exempted by ARB, directly or indirectly through any person,  
10 whether such person is a dealer, distributor, reseller, affiliate, contractor or  
11 otherwise, to any other person that reasonably may install such device on a  
12 vehicle registered in California.

13 k. Making or disseminating in California any advertisement that references any  
14 device, apparatus, or mechanism that alters or modifies the original design or  
15 performance of any required motor vehicle pollution control device or system  
16 and not exempted from Vehicle Code section 27156 unless each advertisement  
17 contains a conspicuous disclaimer. The disclaimer shall read: "LEGAL IN  
18 CALIFORNIA ONLY FOR RACING VEHICLES THAT MAY NEVER BE  
19 USED, OR REGISTERED OR LICENSED FOR USE, UPON A  
20 HIGHWAY." The disclaimer shall be in a minimum font size 10, and shall  
21 appear on each page that any non-certified/non-exempt part appears.

22 l. Plaintiff further requests the issuance of preliminary and permanent injunctive  
23 relief against the defendants, and each of them, compelling them to institute a  
24 recall program for every for every purchaser in California of any  
25 uncertified/non-exempt part already sold.

26 3. For any and all costs incurred in this lawsuit.  
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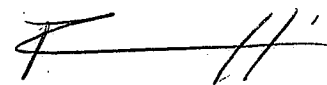
1           4.       For such other and further relief as the Court deems proper.

2  
3       [Note—Pursuant to California Code of Civil Procedure sections 446(a) and 431.30(d), your  
4       answer to this complaint is required to be verified and not a general denial.]

5  
6       Dated: May 8, 2014

Respectfully Submitted,

7           KAMALA D. HARRIS  
8           Attorney General of California

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10          \_\_\_\_\_  
11          ROSS H. HIRSCH  
12          Deputy Attorney General  
13          Attorneys for Plaintiffs, the People of the State  
14          of California ex rel. the California Air  
15          Resources Board